

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: NIKITIN et al.

Application No.: 10/777,522

Group No.: 2651

Filed: February 11, 2004

Examiner: HABERMEHL, J.

For: TUNABLE FLY HEIGHT USING MAGNETOMECHANICAL EFFECT IN A MAGNETIC HEAD

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

DECLARATION OF PRIOR INVENTION IN THE UNITED STATES  
OR IN A NAFTA OR WTO MEMBER COUNTRY  
TO OVERCOME CITED PATENT OR PUBLICATION (37 C.F.R. § 1.131)

PURPOSE OF DECLARATION

1. This declaration is to establish completion of the invention of this application in the United States at a date prior to Oct. 22, 2003, that is the effective date of the prior art publication that was cited by the Examiner.
2. The persons making this declaration are the inventors.

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**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

*(When using Express Mail, the Express Mail label number is **mandatory**;  
Express Mail certification is optional.)*

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING**

... deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**37 C.F.R. § 1.8(a)**

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**37 C.F.R. § 1.10\***

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**TRANSMISSION**

... facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
(type or print name of person certifying)

*\* Only the date of filing ( ' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" ( ' 1.10) or facsimile transmission ( ' 1.6d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.*

### **FACTS AND DOCUMENTARY EVIDENCE**

3. As evidence of the date of conception of the invention of this application, the following attached documents and/or models are submitted as evidence:

STATEMENT: I hereby state that conception of the invention in the above-identified patent application was made prior to Oct. 22, 2003, as supported by Exhibit A. Exhibit A, dated July 24, 2003, shows a copy of the disclosure submitted by the inventors. I state that the concepts and features described in Exhibit A were conceived by me prior to Oct. 22, 2003.

EXHIBIT A: copy of an invention disclosure printed July 24, 2003.

Exhibit A demonstrates that the subject matter of claims 1-4, 7, and 19-20 were in the inventors' possession at least as early as July 24, 2003.

Regarding claims 1-4, all claim elements are disclosed in the first paragraph of section 3 of the "Main Idea" section of Exhibit A. Viewing the Figures of Exhibit A in conjunction with the disclosure in the "Main Idea" section of Exhibit A also evidences the presence of all claim limitations.

The limitations of claim 7, that the portion of the magnetomechanically active structure positioned away from the ABS is anchored, are shown in the Figures of Exhibit A by virtue of the magnetomechanically active structure being surrounded by the whole combination of the magnetomechanically active structure plus the read and write heads.

Regarding claim 19, all claim elements are disclosed in section 3 of the "Main Idea" section of Exhibit A and the Figures.

Regarding claim 20, the design was intended for use in a magnetic storage system of a type having magnetic media, a head as shown in Exhibit A for reading and writing to the magnetic media, a slider for supporting the head, and a control unit for controlling operation of the head. Accordingly, the elements of claim 20 are inherently present in the disclosure of Exhibit A. Paragraph 1 of the Main Idea section of Exhibit A indicates that the invention seeks to overcome disadvantages in then-current hard disk drive (HDD) systems. Those skilled in the art would appreciate that HDD systems such as that claimed in claim 20 are well known to include magnetic media, a head, a slider for supporting the head, and a control unit for controlling operation of the head. Accordingly, the features of claim 20 are inherently disclosed in Exhibit A.

From these Exhibits and statement, it can be seen that the invention claimed in the noted claims was made prior to October 22, 2003.

### **DILIGENCE**

4. It is hereby declared that Applicants acted diligently up to reduction of practice or the filing date of the present patent application.

### **TIME OF PRESENTATION OF THE DECLARATION**

5. This declaration is submitted prior to final rejection, or with a first or supplementary first reply after a final rejection for the purpose of overcoming a new ground of rejection or requirement made by the examiner, in which case the declaration is considered timely and should be considered. See MPEP 715.09(c).

## DECLARATION

6. As a person signing below:

I hereby declare that the documents attached hereto disclose the subject matter of currently pending claims 1-4, 7, and 19-20 of the subject patent application. I also declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

### SIGNATURE(S)

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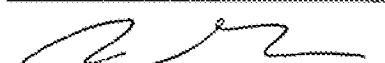
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